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DA 06-1289

Released: June 16, 2006

DOMESTIC SECTION 214 APPLICATION FILED FOR TRANSFER OF CONTROL OF TELCOVE, INC TO LEVEL 3 COMMUNICATIONS, INC

STREAMLINED PLEADING CYCLE ESTABLISHED

WC Docket No 06-118

Comments Due: June 30, 2006

Reply Comments Due: July 7, 2006

On June 9, 2006, TelCove, Inc ("TelCove") and Level 3 Communications, Inc ("Level 3") (together, "Applicants") filed an application ("Application") pursuant to sections 63.03 and 63.04 of the Commission's rules¹ requesting authority to transfer control of TelCove to Level 3²

Applicants assert that this transaction is entitled to presumptive streamlined treatment pursuant to section 63.03(b)(2)(i) of the Commission's rules because immediately following the transaction (1) Applicants and their affiliates combined will hold less than a ten percent (10%) share of the interstate, interexchange market, (2) Applicants and their affiliates will provide U S local exchange services only in geographic areas served by dominant local exchange carriers (none of which are parties to the proposed transaction), and (3) none of the Applicants or their affiliates are dominant with respect to any service³

TelCove, a Delaware corporation, is a non-dominant provider of customized communications services—including voice, data, and IP-based services—for enterprise and carrier customers. It operates or manages a next-generation fiber-optic network serving 70 markets in the eastern United States. It is the ultimate, sole owner of the TelCove Operating Companies through which it provides interstate and international interexchange services, as well

¹ 47 C F R §§ 63.03, 63.04, *see* 47 U S C § 214

² Applicants are also filing applications for transfer of control associated with authorization for international services and terrestrial wireless licenses. Any action on this domestic 214 application is without prejudice to Commission action on other related, pending applications.

³ 47 C F R § 63.03(b)(2)(i)

as intrastate interexchange services and competitive local exchange services, in 18 states. The TelCove Operating Companies include TelCove Investment, LLC, TelCove Long Haul, L P , TelCove Operations, Inc , TelCove FWL, Inc , and various other operating subsidiaries that provide interstate and intrastate interexchange services in Florida, Kentucky, Louisiana, Pennsylvania, South Carolina, Tennessee, Vermont, and Virginia ⁴

TelCove Investment, LLC TelCove Investment, LLC, a Delaware limited-liability company, provides interstate interexchange services, as well as intrastate interexchange services in Arkansas, Florida, Kansas, New Jersey, and New York. It also provides competitive local exchange services in the following local markets: Little Rock, Arkansas, Clearwater, Daytona Beach, Ft. Lauderdale, Ft. Myers, Greater Pinellas, Melbourne, Miami, Orlando, Pensacola, Sarasota, South Florida, Tallahassee, Tampa, Titusville, and West Palm Beach, Florida, Wichita, Kansas, Parsippany and South New Jersey, and Syracuse and Utica/Rome, New York. TelCove Investment, LLC is a wholly-owned, indirect subsidiary of TelCove.

TelCove Long Haul, L P TelCove Long Haul, L P , a Delaware limited partnership, owns TelCove's long-haul network assets used to provide interstate services, although it does not provide any telecommunications services itself. TelCove Long Haul, L P is a wholly-owned, indirect subsidiary of TelCove.

TelCove Operations, Inc. TelCove Operations, Inc , a Delaware corporation, provides interstate and intrastate interexchange services in Alabama, Georgia, Maryland, Michigan, Mississippi, Missouri, New York, North Carolina, Ohio, Tennessee, Texas and Virginia. It also provides competitive local exchange services in the following local markets: Mobile, Alabama, Atlanta, Augusta, and Savannah, Georgia, Baltimore, Bethesda, Frederick, and Rockville, Maryland, Detroit, Michigan, Jackson, Mississippi, Kansas City, Missouri, Albany and Buffalo, New York, Charlotte, Fayetteville, Greensboro, Hickory, Raleigh, Wilmington, and Winston-Salem, North Carolina, Columbus, Ohio, Johnson City and Kingsport, Tennessee, Houston, Texas, and Bristol, Virginia. TelCove Operations, Inc is a wholly-owned, direct subsidiary of TelCove.

TelCove FWL, Inc TelCove FWL, Inc , a Delaware corporation, holds numerous LMDS and 39 GHz licenses from the Commission but has not built out wireless facilities and does not presently use these frequencies. TelCove FWL, Inc is a wholly-owned, indirect subsidiary of TelCove.

Level 3, a Delaware corporation, is a global communications and information services company that offers, through its operating subsidiaries, a wide range of communications services.

⁴ These subsidiaries also provide competitive local exchange services in Jacksonville, Florida, Lexington and Louisville, Kentucky, Baton Rouge and New Orleans, Louisiana; Allentown, Coudersport, Erie, Harrisburg, Hershey, Lancaster, Philadelphia, Pittsburgh, Reading, Scranton, Southpoint, State College, and York, Pennsylvania, Charleston, Columbia, Greenville, and Spartanburg, South Carolina, Nashville, Tennessee, Burlington, Vermont, and Charlottesville, Danville, Hampton Roads, Harrisonburg, Lynchburg, Norfolk, Richmond, Roanoke, Shenandoah Valley, Staunton, and Winchester, Virginia. See Application at 4-7.

in North America, Europe, and Asia, including Internet-protocol-based services, broadband transport, collocation services, and patented Softswitch-based managed modem and voice services. Level 3 Communications, LLC ("Level 3 LLC"), a limited-liability company, is Level 3's principal, indirect operating subsidiary in the United States. Level 3 LLC is a wholly-owned subsidiary of Level 3 Financing, Inc. ("Level 3 Financing"), and Level 3 Financing, in turn, is a wholly-owned subsidiary of Level 3. Level 3 is a publicly-traded company listed on NASDAQ. One entity owns or controls 10% or more of Level 3. Southeastern Asset Management, Inc. ("SAM"), a Tennessee corporation, holds sole or shared voting rights for approximately 18.83% of the outstanding shares of Level 3.⁵

On April 30, 2006, TelCove and Level 3 entered into an Agreement and Plan of Merger ("Agreement") to allow Level 3 to acquire all of the outstanding shares of TelCove. Level 3 will acquire TelCove in a three-step transaction, with all steps occurring in immediate succession on the day of consummation. First, TelCove will merge with Eldorado Acquisition Three, LLC ("Eldorado"), a Delaware limited-liability company, established by Level 3 for the purpose of merging with TelCove, with Eldorado surviving. Second, Level 3 will immediately contribute all of its membership interests in Eldorado to Level 3 Financing. Third, Level 3 Financing will contribute all of its membership interests in Eldorado to Level 3 LLC, at which time Eldorado will be renamed. Following the completion of these three steps, the renamed Eldorado will then be a wholly-owned, direct subsidiary of Level 3 LLC, and the TelCove Operating Companies will be indirect subsidiaries of Level 3. Applicants confirm that no existing shareholder or controlling group of shareholders of TelCove will hold a 10% or greater interest in Level 3 following the proposed transaction.⁶

Applicants state that the proposed transaction will serve the public interest, convenience and necessity because it will (1) expand Applicants' offerings and provide more advanced telecommunications services to a broader customer base, (2) the renamed Eldorado and the TelCove Operating Companies will continue to operate their respective facilities and provide service to their existing customers at the same rates, terms, and conditions, ensuring a seamless transition for those customers, and (3) it will not significantly affect any participant's share of the local exchange, exchange access, or interstate interexchange markets.⁷

⁵ SAM holds voting rights for outstanding shares that are otherwise owned by other entities for whom SAM acts as an investment advisor. None of the other owners of outstanding shares of Level 3 whose shares are voted by SAM owns a 10% or greater direct or indirect interest in Level 3.

⁶ Applicants assert that they have reached an agreement with the U.S. Department of Homeland Security, the U.S. Department of Justice, and the Federal Bureau of Investigation ("Team Telecom") regarding the termination of an existing security agreement between TelCove and Team Telecom upon the delivery of certain assurances by Level 3 to Team Telecom which Applicants state have been provided. Application at 3.

⁷ Applicants assert that, even if Level 3 derived all of the communications revenue (excluding interexchange revenue and reciprocal compensation revenue) reported in the 2005 10-K for Level 3 Communications, Inc. from local exchange and exchange access (when in fact, it derived only a fraction of its revenues from such services), Level 3's revenues would likely account for less than one percent of all nationwide local exchange and exchange access revenues. Citing 2005 Form 10K, Item 7, of Level 3 Communications, Inc.; FCC, Statistics of Communications Common Carriers, at 202, Tbl. 5-20 (2004/2005 ed.) (providing 2003 data),

GENERAL INFORMATION

The transfer of control identified herein has been found, upon initial review, to be acceptable for filing as a streamlined application. The Commission reserves the right to return any transfer of control application if, upon further examination, it is determined to be defective and not in conformance with the Commission's rules and policies. Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR §§ 1.415, 1.419, interested parties may file **comments on or before June 30, 2006 and reply comments on or before July 7, 2006**.⁸ Unless otherwise notified by the Commission, Applicants are permitted to transfer the assets and related control on the 31st day after the date of this notice.⁹ Comments may be filed using (1) the Commission's Electronic Comment Filing System (ECFS), (2) the Federal Government's eRulemaking Portal, or (3) by filing paper copies. See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

- **Electronic Filers** Comments may be filed electronically using the Internet by accessing the ECFS <http://www.fcc.gov/cgb/ecfs/> or the Federal eRulemaking Portal <http://www.regulations.gov>. Filers should follow the instructions provided on the website for submitting comments.
- **For ECFS filers**, if multiple docket or rulemaking numbers appear in the caption of this proceeding, filers must transmit one electronic copy of the comments for each docket or rulemaking number referenced in the caption. In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions, filers should send an e-mail to ecfs@fcc.gov, and include the following words in the body of the message, "get form." A sample form and directions will be sent in response.
- **Paper Filers** Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

FCC, Trends in Telephony Service, Tbl. 8.7 (2005) (providing 2003 data). Applicants further note that a direct year-to-year comparison is not possible, as the FCC's reports do not include 2005 data. Applicants also state that, even assuming that all TelCove and Level 3 toll revenues were interstate interexchange revenues (and they are not), the combined interexchange revenues of TelCove and Level 3 would amount to no more than 2% of total industry-wide toll revenues, and even less than that percentage if all non-LEC, non-wireless toll services are included.

⁸ See 47 C.F.R. § 63.03(a).

⁹ Such authorization is conditioned upon receipt of any other necessary approvals from the Commission in connection with the proposed transaction.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U S Postal Service mail (although we continue to experience delays in receiving U S Postal Service mail) All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission

The Commission's contractor will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, N E , Suite 110, Washington, D C 20002 The filing hours at this location are 8 00 a m to 7 00 p m All hand deliveries must be held together with rubber bands or fasteners Any envelopes must be disposed of before entering the building Commercial overnight mail (other than U S Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743 U S Postal Service first-class, Express, and Priority mail should be addressed to 445 12th Street, S W , Washington D C 20554

You may submit comments, identified by the above noted docket number, by any of the following methods:

- Federal eRulemaking Portal <http://www.regulations.gov> Follow the instructions for submitting comments
- Federal Communications Commission's Web Site <http://www.fcc.gov/cgb/ecfs/> Follow the instructions for submitting comments
- People with Disabilities Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc) by e-mail FCC504@fcc.gov or phone 202-418-0530 or TTY 202-418-0432

In addition, one copy of each pleading must be sent to each of the following:

- (1) The Commission's duplicating contractor, Best Copy and Printing, Inc , 445 12th Street, S W , Room CY-B402, Washington, D C 20554, www.bcpweb.com, phone (202) 488-5300 fax (202) 488-5563,
- (2) Cecilia Seppings, Competition Policy Division, Wireline Competition Bureau, 445 12th Street, S W , Room 5-C230, Washington, D C 20554, email cecilia.seppings@fcc.gov,
- (3) Albert M Lewis, Competition Policy Division, Wireline Competition Bureau, 445 12th Street, S W , Room 5-C224, Washington, D C 20554, e-mail albert.lewis@fcc.gov,
- (4) Susan O'Connell, Policy Division, International Bureau, 445 12th Street, S W , Room 7-B544, Washington, D C 20554, email susan.o'connell@fcc.gov, and
- (5) James Bird, Office of General Counsel, 445 12th Street, S W , Room 8-C824, Washington, D C 20554, e-mail james.bird@fcc.gov

Filings and comments are also available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, S W , Room CY-A257, Washington, D C 20554 They may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc , Portals II, 445 12th Street, S W , Room CY-B402, Washington, D C 20554, telephone (202) 488-5300, fax (202) 488-5563, or via e-mail www.bcpiweb.com

People with Disabilities To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty)

For further information, please contact Cecilia Seppings at (202) 418-1588, or Al Lewis at (202) 418-1561

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